

SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE — REGULAR SESSION

AUSTIN, TEXAS

PROCEEDINGS

TWELFTH DAY

(Wednesday, February 9, 2011)

The Senate met at 11:05 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Birdwell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

The President announced that a quorum of the Senate was present.

Pastor Mark Forrest, Lakeside Baptist Church, Granbury, was introduced by Senator Birdwell and offered the invocation as follows:

We pray, almighty and eternal God, to preserve the works of Your mercy. We pray to You, Lord, who alone are good and holy, to endow those who serve here in our state's Capitol with heavenly knowledge, sincere zeal, wisdom, and justice as laws are enacted. We ask that You assist with Thy holy spirit, counsel, and fortitude, that their service may be conducted in righteousness and be eminently useful to Your people in the State of Texas, that their service would show respect for virtue and reflect a faithful execution of the laws in justice and mercy. Let the light of Your divine wisdom direct the deliberations of these men and women and shine forth in all the proceedings and laws framed for our rule and government, so that they may tend to the preservation of peace and may perpetuate to us the blessing of equal liberty. We ask also for Your unbounded mercy on all of our fellow citizens throughout our state and country, that they may be blessed in the knowledge of Your most holy law, that they may be preserved in union, and in that peace which the world cannot give, and after enjoying the blessings of this life, be admitted to those which are eternal. In Your name I pray. Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of the previous day be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

February 9, 2011

The Honorable President of the Senate

Senate Chamber

Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

HCR 51, Commending Heart Hospital of Austin and St. David's HealthCare for providing exceptional cardiovascular care.

HCR 53, Honoring Viola Vasquez Milan of Midland for her 40 years of service as a schoolteacher in Texas.

Respectfully,

/s/Robert Haney, Chief Clerk

House of Representatives

RESOLUTION SIGNED

The President announced the signing of the following enrolled resolution in the presence of the Senate: **SCR 12**.

PHYSICIAN OF THE DAY

Senator Watson was recognized and presented Dr. Kimball W. Bockmon of Austin as the Physician of the Day.

The Senate welcomed Dr. Bockmon and thanked him for his participation in the Physician of the Day program sponsored by the Texas Academy of Family Physicians.

**INTRODUCTION OF
BILLS AND RESOLUTIONS POSTPONED**

The President announced that the introduction of bills and resolutions on first reading would be postponed until the end of today's session.

There was no objection.

SENATE RESOLUTION 110

Senator Hinojosa offered the following resolution:

SR 110, Recognizing February 9, 2011, as Port Aransas Day at the State Capitol.

The resolution was read and was adopted without objection.

GUESTS PRESENTED

Senator Hinojosa was recognized and introduced to the Senate Keith McMullin, Port Aransas Mayor; Robert Bradshaw, Port Aransas City Manager; Ann Vaughan, Port Aransas Chamber of Commerce Executive Director; and Suzette Freeman, President, Port Aransas Chamber of Commerce Board of Directors.

The Senate welcomed its guests.

SENATE RESOLUTION 146

Senator Seliger offered the following resolution:

SR 146, Recognizing February 9, 2011, as Howard County Day at the State Capitol.

The resolution was read and was adopted without objection.

GUESTS PRESENTED

Senator Seliger was recognized and introduced to the Senate a delegation from Howard County: Tommy Duncan, Mayor of Big Spring; Terri Johansen, Big Spring Area Chamber of Commerce Board of Directors; and Jerry Worthy, businessman.

The Senate welcomed its guests.

SENATE RESOLUTION 207

Senator Wentworth offered the following resolution:

SR 207, Recognizing the members of the Leadership Boerne Class of 2011.

The resolution was read and was adopted without objection.

GUESTS PRESENTED

Senator Wentworth was recognized and introduced to the Senate members of the Leadership Boerne Class of 2011.

The Senate welcomed its guests.

SENATE RESOLUTION 205

Senator Lucio offered the following resolution:

SR 205, Recognizing February 9, 2011, as Kingsville Day at the Capitol.

The resolution was read and was adopted without objection.

GUESTS PRESENTED

Senator Lucio was recognized and introduced to the Senate a delegation of citizens from Kleberg County: Dr. Steven Tallant, President, Texas A&M University–Kingsville; Leo Alarcon, County Clerk, Kleberg County; Stanley Laskowski, City Commissioner, Kingsville; Karen Griffith, Chief Administrative Officer, Kingsville Independent School District; and Alice Byers, Executive Director, Kingsville Chamber of Commerce.

The Senate welcomed its guests.

SENATE RESOLUTION 25

Senator Whitmire offered the following resolution:

SR 25, Recognizing the West Gulf Maritime Association.

The resolution was read and was adopted without objection.

GUESTS PRESENTED

Senator Whitmire was recognized and introduced to the Senate West Gulf Maritime Association members: Jurgen Schroder, owner, Schroder Marine Services; Steve Hale, CEO, Gulf Copper; George Pontikos, Vice-president, Odfjell USA; Morris Albright, Port Commissioner, Port Arthur International Public Port; and Nathan Weseley, President, West Gulf Maritime Association.

The Senate welcomed its guests.

SENATE RESOLUTION 183

Senator Watson offered the following resolution:

SR 183, Recognizing Leon Schmidt on the occasion of his 95th birthday.

The resolution was read and was adopted without objection.

GUEST PRESENTED

Senator Watson was recognized and introduced to the Senate Leon Schmidt.

The Senate welcomed its guest.

SENATE RESOLUTION 162

Senator Lucio offered the following resolution:

SR 162, Recognizing February 9, 2011, as Harlingen Day at the State Capitol.

The resolution was read and was adopted without objection.

GUESTS PRESENTED

Senator Lucio was recognized and introduced to the Senate a delegation of citizens from the City of Harlingen: Chris Boswell, Mayor; Joey Trevino, City Commissioner; Dean La Fever, Chairman, Harlingen Area Chamber of Commerce Board of Directors; and Crisanne Zamponi, Executive Director, Harlingen Area Chamber of Commerce.

The Senate welcomed its guests.

SENATE RESOLUTION 184

Senator Nelson offered the following resolution:

SR 184, In memory of Richard Reese Wenneker.

The resolution was again read.

The resolution was previously adopted on Monday, February 7, 2011.

In honor of the memory of Richard Reese Wenneker, the text of **SR 184** is printed at the end of today's *Senate Journal*.

GUESTS PRESENTED

Senator Nelson was recognized and introduced to the Senate family members of Richard Reese Wenneker: his wife, Sonja, and sons, Adam and Corey.

The Senate welcomed its guests and extended its sympathy.

CONCLUSION OF MORNING CALL

The President at 11:42 a.m. announced the conclusion of morning call.

SENATE BILL 18 ON SECOND READING

On motion of Senator Estes and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 18** at this time (Submitted by Governor as an emergency matter):

SB 18, Relating to the use of eminent domain authority.

The bill was read second time and was passed to engrossment by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to engrossment.

SENATE BILL 18 ON THIRD READING

Senator Estes moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 18** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Wentworth.

Reason for Vote

Senator Wentworth submitted the following reason for vote on suspension of the Constitutional Three-day Rule:

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **SB 18**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **SB 18** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

REMARKS ORDERED PRINTED

On motion of Senator Hegar and by unanimous consent, the exchange between Senators Estes and Hegar regarding **SB 18** was ordered reduced to writing and printed in the *Senate Journal* as follows:

Senator Hegar: Can you explain the effect of the new standard for recovery of access damages found in Property Code 21.042(d), as found in Section 10 of the bill (page 6, lines 40-53)?

Senator Estes: In certain circumstances, we would want more landowners who are currently not recovering for loss of access under the "material and substantial" test as that test is currently interpreted by the courts to recover for loss of access. We are acting here to change the current state of the law on that issue. We want the words in 21.042(d) to be interpreted such that if a property owner suffers a loss of access that is material—not trivial, nominal, imaginary, or speculative—and that loss affects the market value of the property, then the court must allow the factfinder to consider evidence on that loss when the factfinder determines what damages are due to the landowner. It's a lower standard than "material and substantial" and a higher standard than "any diminished access" proposed in the filed version of this bill.

Senator Hegar: Thank you.

(Senator Nelson in Chair)

SESSION TO CONSIDER EXECUTIVE APPOINTMENTS

The Presiding Officer announced the time had arrived to consider executive appointments to agencies, boards, and commissions. Notice of submission of these names for consideration was given yesterday by Senator Deuell.

Senator Deuell moved confirmation of the nominees reported yesterday by the Committee on Nominations.

The Presiding Officer asked if there were requests to sever nominees.

There were no requests offered.

NOMINEES CONFIRMED

The following nominees, as reported by the Committee on Nominations, were confirmed by the following vote: Yeas 31, Nays 0.

Chief Administrative Law Judge, State Office of Administrative Hearings: Cathleen Parsley, Travis County.

Presiding Judge, Eighth Administrative Judicial Region: Roger Jeffrey Walker, Tarrant County.

Presiding Judge, Fifth Administrative Judicial Region: J. Rolando Olvera, Cameron County.

Presiding Judge, Seventh Administrative Judicial Region: Morton Valdean Rucker, Midland County.

Presiding Judge, Third Administrative Judicial Region: Billy Ray Stubblefield, Williamson County.

Members, Board of Directors, State Bar of Texas: Timothy D. Belton, Harris County; Virginia Milam Campbell, Tarrant County; Becky Baskin Ferguson, Midland County; Annette P. Raggette, Williamson County.

Justice, Court of Appeals, First Court of Appeals District: Harvey Brown, Harris County.

Justice, Court of Appeals, Third Court of Appeals District: Jeffrey Lee Rose, Travis County.

Executive Commissioner, Health and Human Services Commission: Thomas Michael Suehs, Travis County.

Members, State Commission on Judicial Conduct: Joel P. Baker, Smith County; Martha Morales Hernandez, Angelina County; M. Sue Kurita, El Paso County; Steven L. Seider, Dallas County; Edward J. Spillane, Brazos County; Diane De La Torre Threadgill, Ellis County.

Members, Texas Judicial Council: Richard Vernon Battle, Travis County; Henry Nuss, Nueces County.

Judge, 243rd Judicial District Court, El Paso County: Bill D. Hicks, El Paso County.

Judge, 378th Judicial District Court, Ellis County: Joe Franklin Grubbs, Ellis County.

Judge, 431st Judicial District Court, Denton County: Jonathan Mark Bailey, Denton County.

Judge, 438th Judicial District Court, Bexar County: Victor Hugo Negron, Bexar County.

Judge, 439th Judicial District Court, Rockwall County: David Edgar Rakow, Rockwall County.

Judge, 43rd Judicial District Court, Parker County: Trey Edward Loftin, Parker County.

Judge, 96th Judicial District Court, Tarrant County: Reuben Houston Wallace, Tarrant County.

Member, Board for Lease of Texas Department of Criminal Justice Lands: Wesley D. Lloyd, McLennan County.

Member, Board for Lease of Texas Parks and Wildlife Lands: Wesley D. Lloyd, McLennan County.

Members, On-site Wastewater Treatment Research Council: Scott Ralph Adams, Jeff Davis County; Elaine Anne Boatright, Bastrop County; Brian Johnson Christian, Williamson County; Jaime Ariel Garza, Cameron County; Richard Dwain Gerard, Polk County; Sockalingam Kannappan, Harris County; Janet D. Meyers, Denton County; Brian Lawrence Padden, Travis County; Carl M. Russell, Lubbock County; William F. Smith, Hays County; Ronald J. Suchecki, McLennan County.

Members, State Board of Veterinary Medical Examiners: Bud E. Alldredge, Nolan County; John Todd Henry, Hays County; Paul Martinez, Sutton County.

SENATE BILL 257 REREFERRED

Senator Carona submitted a Motion In Writing requesting that **SB 257** be withdrawn from the Committee on Transportation and Homeland Security and rereferred to the Committee on Health and Human Services.

The Motion In Writing prevailed without objection.

SENATE CONCURRENT RESOLUTION 15

The Presiding Officer laid before the Senate the following resolution:

WHEREAS, Section 17, Article III, Texas Constitution, provides that neither house of the legislature may adjourn for more than three days without the consent of the other house; now, therefore, be it

RESOLVED by the 82nd Legislature of the State of Texas, That each house grant the other permission to adjourn for more than three days during the period beginning on Wednesday, February 9, 2011, and ending on Monday, February 14, 2011.

WHITMIRE

SCR 15 was read.

On motion of Senator Whitmire, the resolution was considered immediately and was adopted by the following vote: Yeas 31, Nays 0.

SENATE BILL 237 REREFERRED

Senator Deuell submitted a Motion In Writing requesting that **SB 237** be withdrawn from the Committee on Agriculture and Rural Affairs and rereferred to the Committee on Health and Human Services.

The Motion In Writing prevailed without objection.

MOTION TO ADJOURN

On motion of Senator Whitmire and by unanimous consent, the Senate at 12:28 p.m. agreed to adjourn, in memory of Richard Reese Wenneker, upon completion of the introduction of bills and resolutions on first reading, until 1:30 p.m. Monday, February 14, 2011.

SENATE BILLS ON FIRST READING

The following bills were introduced, read first time, and referred to the committees indicated:

SB 23 by Nelson

Relating to efficiencies and cost-savings in the health and human services and other related regulatory agencies, including the state medical assistance and child health plan programs.

To Committee on Finance.

SB 353 by Birdwell

Relating to the territory and dissolution requirements of the Southern Trinity Groundwater Conservation District.

To Committee on Natural Resources.

SB 433 by Hegar

Relating to the de-annexation of land in Bastrop County by the Barton Springs-Edwards Aquifer Conservation District.

To Committee on Natural Resources.

SB 571 by Nelson

Relating to efficiencies and cost-savings in the health and human services agencies and other related regulatory agencies.

To Committee on Finance.

CO-AUTHOR OF SENATE BILL 18

On motion of Senator Estes, Senator Rodriguez will be shown as Co-author of **SB 18**.

CO-AUTHOR OF SENATE BILL 240

On motion of Senator Huffman, Senator Rodriguez will be shown as Co-author of **SB 240**.

CO-AUTHOR OF SENATE BILL 262

On motion of Senator Carona, Senator Van de Putte will be shown as Co-author of **SB 262**.

CO-AUTHOR OF SENATE BILL 272

On motion of Senator Zaffirini, Senator Rodriguez will be shown as Co-author of **SB 272**.

CO-AUTHOR OF SENATE BILL 325

On motion of Senator Van de Putte, Senator Zaffirini will be shown as Co-author of **SB 325**.

CO-AUTHOR OF SENATE BILL 374

On motion of Senator Wentworth, Senator Rodriguez will be shown as Co-author of **SB 374**.

CO-AUTHOR OF SENATE BILL 423

On motion of Senator Lucio, Senator Van de Putte will be shown as Co-author of **SB 423**.

CO-AUTHOR OF SENATE BILL 521

On motion of Senator Carona, Senator Deuell will be shown as Co-author of **SB 521**.

CO-AUTHOR OF SENATE BILL 530

On motion of Senator Huffman, Senator Carona will be shown as Co-author of **SB 530**.

CO-AUTHOR OF SENATE JOINT RESOLUTION 1

On motion of Senator Ogden, Senator Nichols will be shown as Co-author of **SJR 1**.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolution

SR 211 by Hinojosa, In memory of Philip Dale Reich of Bishop.

Welcome and Congratulatory Resolutions

SR 201 by Williams, Welcoming members of the Texas Aggregates and Concrete Association to the State Capitol on their legislative day, February 9, 2011.

SR 202 by Jackson, Recognizing the Texas Economic Development Council on the occasion of its 50th anniversary.

SR 203 by Jackson, Recognizing the Pasadena Volunteer Fire Department for 80 years of service to its community.

SR 204 by Birdwell, Welcoming the 2011 Leadership Ennis class to the State Capitol.

SR 208 by Harris, Recognizing Stan Jaworski on the occasion of his retirement from the Federal Aviation Administration.

SR 209 by Ellis, Recognizing LAMIK Beauty in Houston for its support of National Women and Girls HIV-AIDS Awareness Day.

HCR 53 (Seliger), Honoring Viola Vasquez Milan of Midland for her 40 years of service as a schoolteacher in Texas.

Official Designation Resolutions

SR 200 by Birdwell, Recognizing March 2, 2011, as Hood County Day at the State Capitol.

SR 206 by Deuell, Recognizing March 1, 2011, as Multiple Sclerosis Day at the State Capitol.

SR 210 by Hinojosa, Recognizing the "No Excuses!" BBQ Challenge and Music Festival as a Texas State Barbecue Championship competition.

SR 212 by Nichols, Recognizing February 10, 2011, as Lufkin-Angelina County Day at the Capitol.

ADJOURNMENT

Pursuant to a previously adopted motion, the Senate at 12:39 p.m. adjourned, in memory of Richard Reese Wenneker, until 1:30 p.m. Monday, February 14, 2011.

APPENDIX

RESOLUTIONS ENROLLED

February 8, 2011

**SR 151, SR 178, SR 189, SR 191, SR 192, SR 193, SR 194, SR 195, SR 196,
SR 197, SR 198, SR 199**

SENT TO SECRETARY OF STATE

February 9, 2011

SCR 12

**In Memory
of
Richard Reese Wenneker
Senate Resolution 184**

WHEREAS, The Senate of the State of Texas honors and commemorates the life of Boy Scout leader Richard Reese Wenneker, who died in August of 2010 at the age of 54; and

WHEREAS, Richard Wenneker was born August 2, 1956, in Tulsa, Oklahoma; he joined the Cub Scouts when he was eight years old and earned his Eagle Badge when he was 17; he was admitted to the Order of the Arrow and was awarded the Vigil Honor for his exemplary service to his community and to Scouting; and

WHEREAS, Highly experienced in rugged backpack camping, he attended five high adventure wilderness camps and served for five years as a youth summer camp counselor in Oklahoma; and

WHEREAS, Rich was a dedicated adult Scout leader who lived his life faithful to the Scout oath; he loved life and learning and cared deeply about preserving natural resources and the environment; he was an inspirational leader and had a positive influence on the lives of many young men, including his three sons, who were actively involved in the Scouting program; and

WHEREAS, Rich Wenneker was devoted to his wife of 26 years, Sonja; his sons, Adam, Corey, and Jacob; his mother, Shirley Reese Wenneker; and his brother and sister, Phil Wenneker and Lori Thompson; he was a faithful member of the First United Methodist Church of Grapevine; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 82nd Legislature, hereby pay tribute to the life of Richard Reese Wenneker and extend sincere condolences to his family; and, be it further

RESOLVED, That a copy of this Resolution be prepared for his family as an expression of deepest sympathy from the Texas Senate, and that when the Senate adjourns this day, it do so in memory of Richard Reese Wenneker.

NELSON